



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 28, 1995

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Legal Affairs Division  
Texas Department of Criminal Justice  
P.O. Box 99  
Huntsville, Texas 77342-0099

OR95-752

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30486.

The Texas Department of Criminal Justice (the "department") received a request for a report of a certain investigation conducted by its Internal Affairs Division. You assert that the report is excepted from required public disclosure pursuant to sections 552.101 and 552.108 of the Government Code. You submitted for our review what you say are "case opening documents connected to the records at issue."

Section 552.101 excepts from required public disclosure information that is confidential by statutory law, constitutional provision, or by judicial decision. You assert this exception applies to witness and inmate statements. You raise no statutory law, constitutional provision, or judicial decision that would apply to the statements. We conclude the department may not withhold the statements from required public disclosure based on section 552.101.

You also assert that section 552.101 in conjunction with V.T.C.S. article 4413(29cc), section 19A excepts from required public disclosure polygraph examination reports. The information you enclosed contains no polygraph examination report or information that pertains to a polygraph examination. Therefore, we cannot conclude that the department may withhold any information pursuant to section 552.101 in conjunction with V.T.C.S. article 4413(29cc), section 19A.

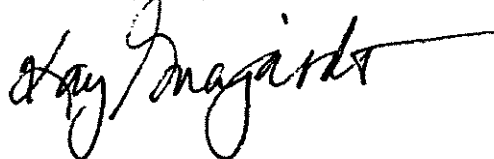
You are concerned about the release of social security numbers. Under certain circumstances, social security numbers may be withheld under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* The only social security number in the materials you enclosed is that of the requestor. Thus, you need not be concerned with the public release of that number.

We will consider your section 552.108 claim. Section 552.108 applies to information that relates to an investigation of an allegation that might result in criminal charges during the pendency of the investigation and prosecution. *See* Open Records Decision No. 350 (1982). Because you assert that the allegations the department is investigating are possibly criminal, we conclude that the department may withhold from required public disclosure the requested information during the investigation, and if it results, the prosecution, with the exception of the kind of information that would normally appear on the front page of an offense report. We have marked the documents accordingly. If no criminal prosecution results, section 552.108 does not apply to any of the requested information. *See id.*; Open Records Decision No. 493 (1988) at 2.

The name and statement of a witness in a closed criminal case may be excepted from required public disclosure, if the law enforcement agency demonstrates that disclosure might either subject the witness to possible intimidation or harassment, or harm the prospects of future cooperation by the witness. *See* Open Records Decision No. 297 (1981). In the event that prosecution resulted and is now concluded and the case is closed, we do not believe the department has made the requisite demonstration to allow us to conclude that the department may withhold the names of the witnesses in this case based on section 552.108.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo", with a long horizontal flourish extending to the right.

Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 30486

Enclosures: Marked documents